



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,507	07/03/2003	Eugene Feinberg	8009-17	4811
22150 7590 03/31/2010 F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY, NY 11797				
EXAMINER				
KINES, ROBERT D				
ART UNIT		PAPER NUMBER		
3623				
MAIL DATE		DELIVERY MODE		
03/31/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/613,507

Applicant(s)

FEINBERG ET AL.

Examiner

R. David Rines

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 11-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Notice to Applicant

[1] This communication is in response to the amendment filed 6 January 2010. Claims 1-4, 6, 8, and 11-12 are pending.

Response to Remarks

[2] Applicant's remarks filed 6 January 2010 have been fully considered by the Examiner and they are persuasive. Previous rejection(s) under 35 U.S.C. 112, first paragraphs, 35 U.S.C. 112, second paragraph, and 35 U.S.C. 102(a) have been withdrawn below. New rejections under 35 U.S.C. 112, second paragraph and 35 U.S.C. 101 have been entered below.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[3] Previous rejection(s) of claims 1-4, 6, 8, 11, and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement are hereby withdrawn in accordance with Applicant's persuasive remarks filed 6 January 2010.

[4] Claims 1-4, 6, 8, 11, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "...determining from the input data whether a round robin schedule is possible and upon determining that the round robin schedule is not possible performing steps for determining a feasible schedule...".

As presented in claim 1, the recited calculating steps are only performed when a round robin schedule is not possible. I must be previously determined that a "round robin" schedule is not feasible. It is not clear how or if the recited steps are implemented in the event that a round robin schedule is possible. It can be reasonably inferred that when a "round robin" schedule is feasible, the "outputting" step would serve to output a round robin "feasible" schedule and therefore, not engage the novel steps of the reminder of the claim. Appropriate clarification/correction is required.

Claims 1-4, 6, 8, 11, and 12 inherit and fail to remedy the deficiencies of independent claim 1 through dependency and when analyzed in the same manner described above with respect to claim 1, are also rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

[5] Claims 1-4, 6, 7, 11, and 12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to nonstatutory subject matter.

Claims 1-4, 6, 7, 11, and 12 are directed to “a computer readable medium...”. With respect to embodiments of “computer readable medium”, the Specification as originally filed provides general examples of computer-readable media but is silent with respect to inclusion of transitory media such as carriers or wave. there exists a preponderance of evidence in standard and commonly adopted scientific and technical terminology that computer-readable media is reasonably considered to include signals and other transitory media.

A transitory element, e.g. signal or wave, is not considered a statutory computer readable media, i.e., article of manufacture, such as a tangible diskette or storage drive. The basis for the rejection is in accordance with the findings of the Federal Circuit *In re Nuijten*.

“A transitory, propagating signal like Nuijten’s is not a process, machine, manufacture, or composition of matter.’ ... Thus, such a signal cannot be patentable subject matter.” *In re Nuijten*, Docket no. 2006-1371 (Fed. Cir. Sept. 20, 2007).

*Examiner suggests utilizing the defining language “non-transitory computer-readable storage medium” to exclude transitory elements to overcome the present rejection under 35 U.S.C. 101.

As presented, claims 1-4, 6, 7, 11, and 12 are rejected because the claims are directed to non-statutory subject matter under 35 U.S.C 101.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

[6] Previous rejection(s) of claims 1-4, 6, 8, 11-12 are rejected under 35 U.S.C. 102(a) as being anticipated by Feinberg et al., “Sensor Resource Management for an Airborne Early Warning Radar”, have been overcome in accordance with the remarks filed 6 January 2010 in which Applicant indicates that the Feinberg reference is describing Applicant's own work.

Allowable Subject Matter

[7] Claims 1-4, 6, 8, and 11-12 are allowable over the art of record.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. David Rines whose telephone number is (571)272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. David Rines/
Primary Examiner, Art Unit 3623